

REMARKS

This is a Response to the Office Action mailed May 7, 2007, and the Advisory Action dated August 21, 2007, in which a three (3) month Shortened Statutory Period for Response has been set, due to expire August 7, 2007. Attached is the requisite fee for a one-month extension of time, to September 7, 2007. Claim 5 is currently amended. No new matter has been added to the application. No fee for additional claims is due by way of this Amendment. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090. Upon entry of the amendments herewith, claims 5-7, 13 and 17-21 remain pending.

In accordance with 37 U.S.C. 1.114, a Request For Continued Examination (RCE) is filed concurrently with this Amendment so that the Final Office Action dated May 7, 2007, is effectively made non-final. Under 37 U.S.C. 1.114, the effect of the RCE, which makes the instant Office Action non-final, is to cause examination of the instant application to remain open.

Applicants thank the Examiner for indicating that the subject matter of claims 17-20, as noted in paragraph 1 of the Office Action, is allowable over the prior art.

In the Office Action, at section 2, claims 5, 6, 13, and 21 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kobayashi et al.* (JP 62-204442), hereinafter *Kobayashi*. At section 4, claims 5-7, 13, and 21 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kobayashi* in view of *Kinoshita et al.* (JP 2000-285509), hereinafter *Kinoshita*, and *Morimoto* (U.S. Patent 4,670,345), hereinafter *Morimoto*. At section 5, claims 5-7, 13, and 21 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kobayashi* in view of *Kinoshita* and *Morimoto* and further in view of *Okawa et al.* (JP 62-028941) or *Fukano et al.* (U.S. Patent Publication No. 2001/0044073).

Independent claim 5 is amended herewith based upon the allowable subject matter of claim 17. Namely, independent claim 5 is amended to include the feature “the optical recording medium being constituted so that when a laser beam *having a wavelength of 350 nm to 450 nm* is projected thereonto, the element contained in the first recording layer as a primary element and the element contained in the second recording layer as a primary element mix with each other to form a mixed region, thereby forming a recording mark” (emphasis added).

Since claim 5, as amended, is allowable over the cited art of record, dependent claims 6, 7, 13, and 21 (which depend from independent claim 5) are allowable as a matter of law for at least the reason that the dependent claims 6, 7, 13, and 21 contain all features/elements of independent claim 5. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, allowance of claims 6, 7, 13, and 21 is respectfully requested.

In the Office Action at sections 7-9, claims 5-7, 13 and 17-21 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over U.S. Patent Application No. 11/268,109 filed by *Aoshima et al.*, as being obvious over U.S. Patent Application No. 10/818,324 filed by *Aoshima et al.*, and as being obvious over U.S. Patent Application No. 10/748,979 filed by *Arai et al.* Applicants note that none of the above-identified applications have been allowed.

As noted by the Examiner, a terminal disclaimer may be used to overcome a provisional rejection based on a non-statutory obviousness-type double patenting. The Applicants will consider filing a terminal disclaimer in the present application if any of the above-identified co-pending applications issue before the present application and if the present application is still pending at that point. Otherwise, it is respectfully submitted that since none of these other co-pending applications has yet issued, the present application can be passed into allowance and issued without the filing of a terminal disclaimer. A terminal disclaimer may then be filed, if appropriate, in one or more of these other co-pending applications, based on the issuance of the present application.

In light of the above amendments and remarks, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that all pending claims 5-7, 13 and 17-21 are allowable. Applicants, therefore, respectfully request that the Examiner reconsider this application and timely allow all pending claims.

Application No. 10/637,407
Reply to Office Action dated May 7, 2007

The Examiner is encouraged to contact Mr. Armentrout by telephone to discuss the above and any other distinctions between the claims and the applied references, if desired. If the Examiner notes any informalities in the claims, he is further encouraged to contact Mr. Armentrout by telephone to expediently correct such informalities.

Respectfully submitted,
Seed Intellectual Property Law Group PLLC


Raymond W. Armentrout
Registration No. 45,866

RWA:cl

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092
(206) 622-4900
Fax: (206) 682-6031

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